



## State of New Hampshire

### PUBLIC EMPLOYEE LABOR RELATIONS BOARD

BRUCE SYPHERS

Complainant

v.

ASSOCIATION OF PORTSMOUTH TEACHERS,  
NEA-NEW HAMPSHIRE

Respondent

CASE NO. T-0395

ASSOCIATION OF PORTSMOUTH TEACHERS,  
NEA-NEW HAMPSHIRE

Complainant

v.

PORTSMOUTH SCHOOL DISTRICT

Respondent

CASE NO. T-0251:12

DECISION NO. 90-117

#### APPEARANCES

#### Representing Association of Portsmouth Teachers, NEA-New Hampshire:

James Allmendinger, Esq.  
Jo Campbell, UniServ Director

#### Representing Bruce Syphers:

John E. Lyons, Jr., Esq.

#### Representing Portsmouth School District:

Thomas Cayten, Chief Negotiator

#### Also appearing:

Wanda Syphers  
John Pennington

#### BACKGROUND

On April 20, 1990 John Lyons, Jr., Esq., Counsel for Bruce Syphers filed Improper Practice Charge against the Association of Portsmouth Teachers alleging that he was not offered a contract for the 89'-90' school year as a driver education

instructor at the Portsmouth High School and is accordingly grieving his case to the School Board.

In this case there seems to be conflicting statements with respect to representation by the Union of Mr. Syphers in the grievance procedure.

In the exchanges that took place between the Union and the School Board in the grievance process it develops that the Education Association refuse to permit Mr. Syphers to be represented by Counsel of his choice and accordingly denied him such representation and the Teachers Association of Portsmouth indicate that they could dictate or approve of the representative according to the language of their contract.

The complaint further goes on to allege a conflict in the interpretation on the part of the Union with respect to the language contained in the contract.

In the complaint it is further alleged that a member even though belonging to the Union has a right to be represented by an attorney of his own selection and contend that that right is conferred upon Mr. Syphers by RSA 273-A.

The remedy sought by the complainant is a Cease and Desist Order by this Board prohibiting the Union from dictating who shall or shall not represent the complainant in grievance procedures in accordance with the contract.

Any further remedy requested that this Board issue a Cease and Desist Order to the Portsmouth Education Association from interfering with Bruce Syphers rights to hire his own counsel to properly and fully represent his position before the American Arbitration Association.

On May 7, 1990 the Association of Portsmouth Teachers, NEA-New Hampshire filed an Improper Practice Charge against the Portsmouth School District. In this charge the complainant alleges the same basic facts with respect to Bruce Syphers stating that both the School District and the Association were parties signatory to the agreement and the School District, likewise failed to grant Mr. Syphers the relief he has requested in proceedings before the Rockingham County Superior Court.

It is requested by the Association in its complaint that the School District be named as a respondent in this case, and that this unfair labor practice charge be consolidated with Case No. T-0395 at any hearing. The relief requested by the Association Union in this case was only the consolidation of both cases for the purpose of hearing.

As further background in this case, Bruce Syphers in May of 1990 petitioned the Rockingham County Superior Court basically stating that he had been denied his right to retain independent counsel in the pursuit of his grievance under the contract. The court by its decision #90-E27 found that the issue is a labor dispute between the parties and that the PELRB has primary jurisdiction, and further states that the PELRB has statutory power to adjudicate disputes concerning charges of unfair labor practices by a union member against the union.

The final decision of the Rockingham County Superior Court was "The Court abstains from hearing the claim pending the plaintiffs initiation and pursuit of his claim before PELRB" and sited the Board of Trustees v. The Keene State College Education Association 126 N.H. 339, 342-43 (1986).

Hearing on this matter was held on June 28, 1990 at the PELRB office in Concord.

In opening statements Mr. Syphers counsel, Attorney Lyons indicated that there was no real factual issues in dispute and that basically the only issue for consideration was Mr. Syphers right to be represented by himself or a representative of his choice at an arbitration hearing.

Thomas Cayten, representing the City of Portsmouth and the Portsmouth School District argued that it was his position that the rights of the individual were adequately outlined in the contract language. Attorney Lyons argued that Mr. Syphers was a drivers education teacher and along with another individual, also a drivers education teacher, and that one position was being eliminated by the School Board. And that his client, Mr. Syphers had seniority over the individual retained and made reference to the contractual language in article 10 dealing with a subject of seniority and Mr. Syphers had a right to be represented by counsel of his choice at any grievance procedure hearing. Attorney Lyons cited PELRB rule 203.02 which specifically provides that a party has a right to counsel of his own choice and cited 273-A:6 V.

James Allmendinger, Esq. for the Association, called several witnesses who testified as to the negotiations of the contract in existence and the methods by which the contract was adopted. Witness Jo Campbell, the UniServ Director of the Sea Coast area for NEA-New Hampshire, testified that the Association had a right to decide when a grievance is to be pursued or not pursued in accordance with the contract language.

Testimony was offered by the Association as to the language in the contract in the various sections which dealt with the rift procedure and also a clustering procedure and the procedures followed in recall. They further raised the question of method interpretation of longevity indicating that there were more then one method of interpreting this particular subject. The Association holds that the longevity means the longevity of the bargaining unit. Another interpretation of this section holds that longevity means employment within the system and there in lies the issues presented for contract interpretation.

The case turns on one issue, and one issue alone, and that being whether or not a member of the bargaining unit has a right to independent counsel to represent him in the grievance procedure.

The Association contends it controls the right of representation, Mr. Syphers contends that they cannot take this right away in contract language.

#### FINDINGS OF FACT

1. Bruce Syphers was rifted as a driver education instructor pursuant to the Districts decision. A grievance was filed by Mr. Syphers in accordance with the grievance procedure. The District denied Mr. Syphers grievance. Mr. Syphers sought to employ counsel of his choice to present his argument and interpretation of the collective bargaining agreement before the arbitrator whenever selected. The Association alleges that they, and they alone control representation of their members before any grievance procedural hearing, or at least any representative of one of their members in such procedures must be approved by the Association. The Association would not permit the case to go forward with Mr. Syphers having selected his own counsel who was not approved by the Association.
2. We find that the School District and the Association are in agreement on the interpretation of the contractual language and jointly seek to deny Mr. Syphers to select representative of his own choosing. Evidence before us indicate that the Association at no time has refused to represent Mr. Syphers during an arbitration nearing. There were several cases

cited in support of the Associations position namely the Rochester School Board case and the Staples Case and the Mascoma Valley School Bus Drivers v. John Fessenden. While these cases have some similarity, they do not point to the specific issue before us.

3. We find that this issue presented in this case is a contractual interpretation posed by the parties and should be settled in accordance with the procedure established for that purpose.
4. The negotiated agreement Article 33 paragraph 33.13 reads as follows "Should the grievant so elect, the aggrieved person shall be represented at all stages of the grievance procedure by his/herself, or by a representative selected or approved by the ASSOCIATION. The ASSOCIATION shall be notified at all levels and has the right to be present at all levels."
5. Bruce Syphers being a member of the bargaining unit which negotiated the above language must be bound by the agreement and forfeited his right to representation at grievance hearings, other than that specified in Article 33 paragraph 33.13.

#### DECISION

The Board finds that the complainant is not entitled to counsel for a grievance hearing other than that approved by the Association. The Unfair Labor Practice charge is hereby DISMISSED.

Signed this 26 day of November, 1990.

  
EDWARD J. HASELTINE  
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding. Members Daniel Toomey and Seymour Osman present and voting. Also present, Executive Director Evelyn C. LeBrun.